

Customer No. 22,852
Application No. 09/534,038
Attorney Docket No. 7883.0004-02

REMARKS

As an initial matter, Applicant would like to thank the Examiner for extending the courtesy of conducting a personal interview with Applicant's representatives on January 28, 2004. The remarks set forth below regarding the claim rejections reflect the issues discussed during the interview.

Applicant directs the Examiner's attention to the Petition Under 37 C.F.R. §1.48(b) and Amendment and Response to Restriction Requirement filed in this application on March 4, 2003. A copy of the Petition and Amendment are enclosed for the Examiner's convenience along with a PTO date-stamped postcard indicating the receipt of those documents by the U.S. Patent and Trademark Office. In the Petition and Amendment, Applicant requested that inventors Scott J. Wolf, Greg R. Furnish, Todd A. Hall, David Y. Phelps, Nancy M. Briefs, William Santamore, Daniel Burkhoff, Simon Furnish, Stephen Evans, Roger D. Kamm, Richard Renati, Gerald Melsky, and Eun Bo Shim be deleted from this application since inventions of these individuals are no longer being claimed in this application. To date, Applicant has not received a decision on the Petition or an indication that the inventorship amendment has been entered. Applicant therefore requests that a decision on the Petition and entry of the amendment to the inventorship be provided in the next office communication.

By this Amendment, Applicant cancels claims 43-47, without prejudice or disclaimer. Applicant reserves the right to present the subject matter of claims 43-47 at a later date. Claims 15 and 29 are thus the sole pending independent claims.

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In the Office Action, the Examiner rejected currently pending claims 15-42 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,290,728 to Phelps et al. ("Phelps").

The Section 102(e) rejection should be withdrawn because Phelps is not prior art to the present application. The present application claims priority under 35 U.S.C. §§119 and 120 to several prior applications. More specifically, as discussed at the interview, claims 15-42 are fully supported by subject matter found in at least the following application to which this application claims the benefit of priority: U.S. Application No. 09/016,485, filed January 30, 1998. Thus, claims 15-42 are entitled to an effective filing date of January 30, 1998.

Phelps was filed (August 4, 1999) and issued (September 18, 2001) after the effective filing date of the claimed subject matter of the present application, and claims the benefit of priority to U.S. Provisional Application No. 60/099,767, filed September 10, 1998, and U.S. Provisional Application No. 60/104,397, filed October 15, 1998. Thus, the claimed subject matter of the present application is entitled to an earlier effective filing date than the earliest effective filing dates to which Phelps claims priority. For at least this reason, Phelps is not prior art to the present application and the rejections based on Phelps should be withdrawn.

Applicant requests the withdrawal of the outstanding rejections, the entry of the inventorship amendment requested March 4, 2003, and the timely allowance of pending claims 15-42.

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The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
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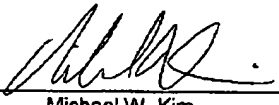
Dated: February 5, 2004

By: 

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CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.8

I hereby certify that this Amendment (9 pages) is being transmitted by facsimile to facsimile no. 703-872-9306 at the U.S. Patent and Trademark Office on February 5, 2004.


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